Representative Dennis Kucinich (D-OH), Chairman of the Domestic Policy Subcommittee, has received a response to his April 6th inquiry to Mary Schapiro, Chairman of the Securities and Exchange Commission (SEC), regarding a proxy statement distributed by Bank of America to its stockholders in advance of a shareholder vote on a merger agreement with Merrill Lynch. The letter from Chairman Schapiro informed Chairman Kucinich that the SEC is reviewing Bank of America's disclosure for material omissions. In the April 6 letter, Chairman Kucinich asked Chairman Schapiro to determine if Bank of America was in violation of the 1934 Securities and Exchange Act for withholding information about $3.6 billion in bonuses to be paid to Merrill Lynch executives.

With the knowledge of Bank of America, Merrill Lynch Board Members authorized the payment of $3.62 billion in performance bonuses to executives who made at least $300,000 per annum and had achieved the title of Vice-President or greater, shortly before Merrill's acquisition by Bank of America. The bonuses paid to Merrill Lynch employees are 22 times the size of bonuses paid at AIG and constitute more than a third (36.2%) of TARP funds allocated to Merrill. Also unusual, the bonuses were allocated before Merrill tallied fourth quarter results, a quarter in which Merrill lost over $15 billion.

When questioned by Domestic Policy Subcommittee staff, Bank of America asserted that "Bank of America disclosed everything it was required to disclose prior to the December 5, 2008 shareholder vote on the merger. Bank of America did not disclose and was not required to disclose to its shareholders prior to December 5, the details it then possessed about the potential size of the Merrill bonuses or the expected timing of their payment to Merrill's employees."^1

In Chairman Schapiro's response, she informs Chairman Kucinich that "While Bank of America may have expressed the view to your staff that it was not required to disclose information about the potential size of the Merrill Lynch bonuses or the expected timing of their payment to its shareholders before the December 5 meeting to approve the merger agreement with Merrill Lynch, the SEC has not expressed a view with respect to that question." Chairman Schapiro further disclosed that SEC is "carefully reviewing the Bank of America disclosure at this time."

1. Email correspondence from John Collingwood, Bank of America, to Majority Staff (Mar. 29, 2009).

The full text of the letter is attached below.

Documents and Links

- SEC Response to Chairman Kucinich
- Kucinich's April 6th Letter to SEC